Mohan v Public Prosecutor

HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO 44–43 OF 2001
AUGUSTINE PAUL J
7 DECEMBER 2001

Criminal Procedure *— Bail bond — Application for reduction of — By accused after release on bail — Bail bond causing hardship to bailor — Whether lawful for court to require security to be furnished by bailor when executing bond — Whether bailor could seek to vary amount of bond — Defination of 'aggrieved' in s 394 Criminal Procedure Code — Criminal Procedure Code ss 389, 390, 393, 394 & 403*

The applicant was charged in the Sessions Court at Kuala Lumpur for an offence under s 409 of the Penal Code vide Arrest Case No 4–62–12–98 and ordered to be released on bail in the sum of RM70,000 with one surety. The bailor was his wife, who as security furnished a bank account book with a deposit of RM70,000 in Bank Bumiputra (M) Bhd. The applicant applied by way of motion for an order for his bail to be varied to RM20,000. The applicant affirmed in the affidavit accompanying the motion that his wife had used up all her savings to bail him out. Their house was charged to MBf Finance Bhd and they were in arrears of 41 months installments. They had been threatened with foreclosure proceedings but had no other funds to pay the arrears. If the bail sum were varied, they would have a sum of RM50,000 to pay the arrears. The issues were whether it was lawful for the court to require security to be furnished by a bailor when executing a bail bond and whether a bailor could seek to vary the amount of bail in respect of which he had executed the bond.

Held, dismissing the motion:

(1) The definition of 'unsecured bail bond' as being one which was not secured by any deposit of or lien upon property suggested that a bail bond could also be secured. Section 403 of the Criminal Procedure Code ('the Code') permitted the deposit of a sum of money in lieu of execution of a bond. An accused who sought the alternative of a cash deposit must therefore had been confronted with a greater hardship than the execution of an unsecured bond. That could only mean that the execution of a bond had in contemplation the furnishing of security. Additionally, s 390 in its reference to the release of a person on bail by one or more 'sufficient' sureties further supportted this view. Clearly the word 'sufficient' did not refer to the number of sureties as that would have already been determined by the court. It therefore referred to their sufficiency after such determination. In exercising this discretion, the court must be satisfied that a proposed surety had the capacity to ensure the attendance of an accused in court when required. A decision on the sufficiency of a surety, being the exercise of a discretion, may entail not only an enquiry into the

A ability of a person to be accepted as a surety but also an alternative requirement, where considered necessary by the court, that he do furnish some form of security in order to be so accepted. It was lawful for the court to require security to be furnished by the bailor (see pp 446C–E, G, I–447A).

B (2) In the motion before the court, the applicant had already been released on bail upon the execution of the bail bond. The person facing difficulties and, consequently, seeking a reduction of the bail amount was in actual fact the bailor. Section 389 of the Code referred, inter alia, to the power of the High Court to reduce or increase the amount of bail required by a court. It was a power C that was exercisable once an order for bail had been made. As it referred to a variation of the bail amount required, it contemplated a situation where the bail bond had not been executed. The only person who had an interest in the amount of bail required was the accused. Section 394 of the Code referred to a person 'aggrieved' by an order that had been made. Such a D person was one who had been affected by the order that had been made. A bailor was not a person affected by an order for bail and was therefore not a person 'aggrieved' within the meaning of the section. It followed that under both sections, a bailor was not a person with an interest to move the High Court. In the circumstances, a bailor was not entitled in law to seek a variation E of the amount of bail in respect of which he had executed the bond (see pp 447E, H–448B).

(3) The proper course to be adopted by the bailor was to follow s 393 of the Code pursuant to which she may apply to the sessions court to be discharged from the bond. If she produced the applicant F before the court at the time she applied to be discharged, the question of forfeiture of her bond would not arise. The bond that she had executed would be discharged. The applicant may then make an appropriate application for the bail sum to be reduced or for the acceptance of a lesser cash deposit in lieu of the execution of a bond (see p 448B–C).

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[Bahasa Malaysia summary

Pemohon telah dituduh di Mahkamah Sesyen Kuala Lumpur kerana satu kesalahan di bawah s 409 Kanun Keseksaan melalui Kes H Tangkapan No 4–62–12–98 dan telah diperintahkan untuk dibebaskan atas ikat jamin berjumlah RM70,000 dengan seorang penjamin. Bailor adalah isteri beliau, di mana beliau sebagai jaminan telah mengemukakan buku akaun bank dengan deposit RM70,000 di Bank Bumiputra (M) Bhd. Pemohon telah membuat permohonan melalui usul untuk satu perintah jaminan beliau dikurangkan kepada I RM20,000. Pemohon telah mengesahkan dalam afidavit yang dilampirkan bersama usul tersebut bahawa isteri beliau telah menggunakan semua wang simpanannya untuk menjamin beliau

keluar. Rumah mereka telah dicagarkan kepada MBf Finance Bhd dan mereka mempunyai tunggakan 41 bulan bayaran ansuran. Mereka telah diugut dengan prosiding halang tebus tetapi tidak mempunyai apa-apa sumber kewangan yang lain untuk membayar tunggakan tersebut. Jika jumlah jaminan tersebut dikurangkan, mereka mempunyai sejumlah RM50,000 untuk membayar tunggakan tersebut. Persoalan-persoalannya adalah sama ada ia adalah sah untuk mahkamah menghendaki jaminan dikemukakan oleh seorang bailor semasa melaksanakan satu bon jaminan dan sama ada seorang bailor boleh memohon untuk mengurangkan jumlah ikat jamin yang telah dilaksanakan oleh beliau di bawah bon tersebut.

Diputuskan, menolak usul tersebut:

(1) Tafsiran 'bon ikat jamin yang tidak bercagar' sebagai suatu yang tidak dicagarkan oleh apa-apa deposit atau lien atas hartanah mencadangkan bahawa satu bon ikat jamin juga boleh dicagarkan. Seksyen 403 Kanun Acara Jenayah ('KAJ') membenarkan pendepositan sejumlah wang untuk menggantikan pelaksanaan bon. Seorang tertuduh yang memohon secara alternatif satu deposit tunai mestilah dengan itu telah mengharungi kesusahan yang lebih daripada pelaksanaan satu bon yang tidak bercagar. Ini hanya bermaksud bahawa pengemukaan cagaran adalah dalam lingkungan pelaksanaan bon. Tambahan pula, rujukan dalam s 309 berhubung dengan pembebasan atas ikat jamin oleh seorang atau lebih penjamin 'yang mencukupi' mengukuhkan sokongan terhadap pandangan ini. Adalah jelas perkataan 'mencukupi' tidak merujuk kepada bilangan penjamin, sekiranya tidak ia telahpun ditentukan oleh mahkamah. Oleh itu ia merujuk kepada kecukupan mereka selepas penentuan demikian. Dalam menggunakan budi bicaranya, mahkamah mestilah berpuas hati bahawa cagaran yang dicadangkan mempunyai keupayaan untuk memastikan kehadiran tertuduh di mahkamah apabila diperlukan. Satu keputusan tentang kecukupan seorang penjamin, yang melibatkan pelaksanaan budi bicara, bukan sahaja akan melibatkan satu siasatan terhadap kemampuan beliau sebagai seorang penjamin tetapi juga, sebagai satu keperluan alternatif di mana difikirkan perlu oleh mahkamah, agar beliau mengemukakan apa bentuk cagaran untuk diterima. Adalah sah untuk mahkamah memerlukan cagaran dikemukakan oleh bailor (lihat ms 446C–E, G, I–447A).

(2) Di dalam usul yang dihadapkan ke mahkamah, pemohon telahpun dibebaskan atas ikat jamin selapsa pelaksanaan bon ikat jamin. Orang yang menghadapai kesusahan dan, selanjutnya, memohon satu pengurangan jumlah jaminan sebenarnya adalah bailor. Seksyen 389 KAJ merujuk, antara lain, tentang kuasa Mahkamah Tinggi untuk mengurangkan jumlah jaminan yang dikehendaki oleh mahkamah. Ia adalah satu kuasa yang

digunakan selepas satu perintah untuk ikat jamin dibuat. Memandangkan ia merujuk kepada satu pengurangan jumlah ikat jamin, ia sememangnya meliputi satu keadaan di mana bon ikat jamin tidak dilaksanakan. Satu-satunya orang yang mempunyai kepentingan dalam jumlah ikat jamin yang diperlukan adalah tertuduh. Seksyen 393 KAJ merujuk kepada seorang yang 'terkilan' oleh satu perintah yang telah dibuat. Orang tersebut adalah orang yang dijejaskan oleh perintah ikat jamin yang telah dibuat. Seorang bailor bukan seorang yang terjejas oleh satu perintah ikat jamin dan oleh itu bukan seorang yang 'terkilan' dalam maksud seksyen ini. Maka, di bawah kedua-dua seksyen ini, seorang bailor bukan seorang yang mempunyai satu kepentingan untuk mengesa Mahkamah Tinggi. Dalam keadaan ini, seorang bailor tidak berhak di sisi undang-undang untuk memohon pengurangan jumlah ikat jamin yang dilaksanakan oleh beliau di bawah bon tersebut (lihat ms 447E, H–448B).

(3) Cara yang betul yang patut diikut oleh bailor adalah untuk memakai s 393 KAJ di mana belaiu boleh memohon kepada mahkamah sesyen untuk dilepaskan daripada bon tersebut. Jika beliau mengemukakan pemohon di hadapan mahkamah pada masa beliau memohon untuk dilepaskan, persoalan tentang perlucuthakan bon beliau tidak akan timbul. Bon yang beliau laksanakan akan dilepaskan. Pemohon mungkin akan membuat satu permohonan yang sesuai untuk jumlah ikat jamin tersebut dikurangkan atau untuk penerimaan satu deposit tunai yang kurang sebagai menggantikan pelaksanaan bon tersebut (lihat ms 448B–C).]

Notes

For a case on reduction of bail bond, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) para 761.

Cases referred to

Abdul Gani v Emperor (1947) 48 Cr LJ 773 (refd)
KP Madhavan Pillai v State [1950] Ker LT 670 (refd)
Lau Kung Seng & Ors v PP [1997] 5 MLJ 323 (refd)
Niamat Khan v Crown AIR 1951 Nag 206 (refd)
PP v Dato' Mat [1991] 2 MLJ 186 (refd)
PP v Zulkifflee bin Hassan [1990] 2 MLJ 215 (refd)
Public Bank Bhd v Perwira Affin Bank Bhd [2001] 7 CLJ 447 (refd)
R v Harrow Justices, ex p Morris [1972] 3 All ER 494 (refd)
RR Chari v Emperor AIR 1948 All 238 (refd)
Rajballam Singh v Emperor AIR 1943 Pat 475 (refd)
State of Mysore v H Venkatarama Kotaiyah (1968) 74 Cr LJ 696 (refd)
Sulaiman bin Kadir v PP [1976] 2 MLJ 37 (refd)
Wong Swee Yee v PP [1994] 4 CLJ 87 (refd)

Legislation referred to

Criminal Procedure Code ss 389, 390(1), 391(1), 393, 394, 403, 404(1), (2)

Appeal from: Arrest Case No 4-62-12 of 1998 (Sessions Court, Kuala Lumpur)

Rabin Devadason (*Devadason & Devadason*) for the applicant.
Dzulkifli bin Ahmad (Attorney General's Chambers) for the respondent.
Wong Kian Kheong (*Karen Lee* with him) (*Lee Hishamuddin*) as amicus curiae.

Augustine Paul J: The dominant issue for determination in the notice of motion ('the motion') before me is whether it is lawful for the court to require security to be furnished by a bailor when executing a bail bond.

The applicant in the motion before me is Mohan a/l MS Maniam ('the applicant'). He was charged in the sessions court at Kuala Lumpur for an offence under s 409 of the Penal Code vide Arrest Case No 4–62–12–98, and was ordered to be released on bail in the sum of RM70,000 with one surety. His bailor was his wife, one Puspa Mala a/p Kotteswaran. As security for the bail amount, she furnished a bank account book with a deposit of RM70,000 in Bank Bumiputra (M) Bhd. In the affidavit accompanying the motion, the applicant affirmed that his wife had used up all her savings to bail him out. They are now in a desperate financial situation. Their house is charged to MBf Finance Bhd and they are in arrears of 41 months' installments. They have been threatened with foreclosure proceedings. They have no other funds to pay the arrears. In the circumstances, the applicant prayed for an order for his bail to be varied to RM20,000 so that they will have a sum of RM50,000 to pay the arrears of installments.

At the commencement of the hearing of the motion before me, the learned deputy public prosecutor raised a preliminary objection. He argued that the applicant has no right to make this application in the High Court as he ought to have applied first in the sessions court which made the initial order of bail. In support of his submission, he relied on *PP v Zulkifflee bin Hassan* [1990] 2 MLJ 215 and *PP v Dato' Mat* [1991] 2 MLJ 186. Learned counsel for the applicant, in saying that the application can be made in the High Court, relied on *Sulaiman bin Kadir v PP* [1976] 2 MLJ 37 and the case of *PP v Zulkifflee bin Hassan*, which had earlier been cited by the learned deputy public prosecutor. In my opinion, the objection raised has been resolved in clear terms by Wan Yahya J (as he then was) in *PP v Dato' Mat* [1991] 2 MLJ 186 where his Lordship said at p 189 that:

> ... several ingresses to bail have been provided by statute which gives the option to an accused person to either go before the same court or apply to a higher court for reconsideration or variation of his bail. It is for him to proceed by whichever avenue that may appear to be more expeditious or practical in the circumstances. Moreover, the appellate remedy under s 394 of the Criminal Procedure Code, as suggested by Mr Deputy, is neither a simple or

A a speedy procedure and is certainly not the best option available in an exigent situation facing an arrested person.

> If the High Court is to fulfil its supervisory role in providing a speedy and efficacious redress of any injustice arising out of a person's pre-trial detention, then it must be given an unimpeded discretion to intervene and if circumstance so require to vary any unjust subordinate court order in respect
B of the amount or conditions set out in any bail bond.

It follows that the applicant is entitled to make this application in the High Court. Accordingly, I dismissed the preliminary objection raised by the prosecution.

C Learned counsel then proceeded to argue on the merits of the case. He said that the applicant has three children and has been attending court on every occasion. He said that in view of the financial problems faced by the applicant and the bailor, the bail amount ought to be reduced. I then inquired whether it is lawful for an accused who has been released on bail to apply for a variation of the bail amount. At this stage, Mr Wong Kian
D Kheong, an advocate and solicitor who was present in court in respect of another matter, and with leave of court as *amicus curiae*, said that it is not valid, in the first place, for the sessions court to have taken security from the bailor when she executed the bond. He said that the intention of the Criminal Procedure Code ('the Code') is not to require security from bailors. That was indeed a very stimulating and novel address. I asked
E Mr Wong whether he could support his stand with authorities. He said that he could do so if time is given to him. I adjourned the hearing of the motion to another date to enable the parties to do the necessary research.

In support of his argument that the court has no power to order that security be provided in addition to the execution of a bail bond, Mr Wong
F first referred to ss 390(1), 391(1), 403, 404(1) and (2) of the Code. They read as follows:

> Section 390(i)
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> Before any person is released on bail, or released on his own bond, a bond for such sum of money as the police officer or Court, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail by
G one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or Court, as the case may be.
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> Section 391(i)
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H As soon as the bond has been executed the person for whose appearance it has been executed shall be released and when he is in prison the court admitting him to bail shall issue an order of release to the officer in charge of the prison, and such officer, on receipt of the order, shall release him.
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> Section 403
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I When any person is required by any Court or officer to execute a bond, with or without sureties, such court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money to such amount as the court may fix, in lieu of executing such bond.

Section 404(i)

Whenever —

(a) it is proved to the satisfaction of the Court by which a bond under this Code has been taken; or

(b) when the bond is for appearance before a Court, it is proved to the satisfaction of that Court,

that such bond has been forfeited the Court shall record the grounds of such proof and may call upon any person bound by such bond to pay the penalty thereof to show cause why it should not be paid.

Section 404(ii)

If sufficient cause is not shown and the penalty is not paid the court may proceed to recover the same by issuing a warrant for the attachment and sale of property belonging to such person.

Mr Wong said that pursuant to s 391(1), an accused person must be released as soon as the bond has been executed. He referred to the words ' ... to pay the penalty ...' in s 404(1) of the Code, and said that they provide for payment of the bond sum in the future and do not envisage the deposit of money or the provision of other forms of security at the time the accused person is granted bail. He added that this view is supported by s 404(2) of the Code which empowers the court to recover the bond sum by attaching the property of the surety. He referred to the form of bail bonds, as contained in form 3 in the Second Sch to the Code, and said that the words 'bind myself to forfeit' in the form contemplate only an undertaking which again supports the argument that no security should be taken when a bail bond is executed. He added that s 403, which provides for a deposit of a sum of money in lieu of execution of a bond, means that the execution of a bond is sufficient per se in law for the accused person to be released on bail. He then said that the word 'bond' itself has been defined in *The Law Lexicon with Legal Maxims* (Reprint Ed, 1993) as:

> An agreement of engagement; a covenant between two or more persons. Technically, a bond is a deed or obligatory instrument in writing, whereby one doth bind himself to another, to pay a sum of money, or to do some other act; but in popular language any instrument in writing that legally binds a party to do a certain thing may be called a bond ...

He referred to *Wong Swee Yee v PP* [1994] 4 CLJ 87 where it was held that a bond has a contractual effect. As such, he said, a bond cannot and should not be secured by any deposit of cash or by any other means. In support of his submission, Mr Wong relied on Indian cases such as *RR Chari v Emperor* AIR 1948 All 238; *Rajballam Singh v Emperor* AIR 1943 Pat 475; *State of Mysore v H Venkatarama Kotaiyah* (1968) 74 Cr LJ 696; *Niamat Khan v Crown* AIR 1951 Nag 206 and *Abdul Gani v Emperor* (1947) 48 Cr LJ 773, where it has been held that s 499 of the Indian Criminal Procedure Code (similar to our s 390(1)) does not authorize the magistrate to demand cash security from the accused. This view was adopted in *Lau Kung Seng & Ors v PP* [1997] 5 MLJ 323. He also referred to the English case of *R v Harrow Justices, ex p Morris* [1972] 3 All ER 494, where Lord Widgery CJ said at p 496:

A I would conclude by emphasizing that where a court proposing to grant bail is minded to require sureties to enter into a recognisance, the court may, and no doubt will, refuse to grant bail if not satisfied that the sureties are good for the sums which they have promised to pay. If there is doubt whether a surety will, in the event, be able to pay the sum which he has committed himself to pay, the justices can properly reject him as a surety, and in the absence of a B substitute, refuse bail, but having decided that a surety is adequate to stand bail for the amount involved, there is in my judgment no authority for the court to go on and require that that surety shall put down any specific sum of money or other security as a condition of bail being granted.

In his reply, the learned deputy public prosecutor said that though the Code is silent on the requirement of security in the execution of a bail bond, it has C been the practice in the subordinate courts to require such security by way of land titles and bank deposits. He added that the Indian cases relied on by Mr Wong are based on s 403 which provides for the taking of a cash deposit only in lieu of executing a bond. He concluded by saying that the court, in any event, has the discretion to require security to be furnished.

D In my opinion, the question of whether a court is empowered to order security to be furnished when a bail bond is being executed is dependent on the scope and ambit of what is being executed, that is to say, the bail bond. If it cannot be secured by any manner, then the submission advanced by Mr Wong will have merit. *Black's Law Dictionary* (6th Ed) defines 'bail bond' as:

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> *Bail bond.* A three party contract which involves state, accused and surety and under which surety guarantees state that accused will appear at subsequent proceedings. *Accredited Surety & Cas Co Inc v State, for use and benefit of Hillsborough County* Fla App 383 Sa 2d 308.
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> A written undertaking, executed by the defendant or one or more F sureties, that the defendant designated in such instrument will, while at liberty as a result of an order fixing bail and of the execution of a bail bond in satisfaction thereof, appear in a designated criminal action or proceeding when his attendance is required and otherwise render himself amenable to the orders and processes of the court, and that in the event he fails to do so, the signer of the bond will pay to the court (ie forfeit) the amount of money specified in the order fixing bail. Fed R Crim P46; 18 USCA 3141 et seq. See G also Release on own recognizance.
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> *Cash bail bond.* A sum of money, in the amount designated in an order fixing bail, posted by a defendant or by another person on his behalf (surety) with a court or other authorized public officer upon conditions that such money will be forfeited if the defendant does not comply with the directions of a court requiring his attendance at the criminal action or proceeding H involved and does not otherwise render himself amenable to the orders and processes of the court.
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> *Unsecured bail bond.* A bail bond for which the defendant is fully liable upon failure to appear in court when ordered to do so or upon breach of a material condition of release, but which is not secured by any deposit of or lien upon property. See Release on own recognizance. I

The phrase 'release on own recognizance' is defined in the same dictionary as:

> Pre-trial release based on the person's own promise that he will show up for trial (no bond required). A species of bail in which the defendant acknowledges personally without sureties his obligation to appear in court at the next hearing or trial date of his case. It is used in place of a bail bond when the judge or magistrate is satisfied that the defendant will appear without the need of surety bond or other forms of security.

It can therefore be confidently stated that an accused person can be released on bail upon the execution of a recognizance or a bail bond. Recognizance as a mode of release is an accepted form in some common law jurisdictions (see *Bail: Law and Practice* (3rd Ed) p 517).

It is not prescribed in our Code, though it is analogous to the release of a person on him executing a bond for his appearance without sureties. The definition of 'unsecured bail bond' that I have referred to earlier as being one which is not secured by any deposit of or lien upon property suggests that a bail bond can also be secured. To my mind, s 403 of the Code supports this approach. It permits the deposit of a sum of money in lieu of the execution of a bond. The object of the section is to provide an easier route to a person who is unable to arrange for the execution of a bond. Surely the deposit of a sum of money as authorized by the section will cause greater hardship than the execution of a mere unsecured bond. An accused who seeks the alternative of a cash deposit must therefore have been confronted with a greater hardship than the execution of an unsecured bond. That can only mean that the execution of a bond has in contemplation the furnishing of security. Additionally, s 390(1), in its reference to the release of a person on bail by one or more 'sufficient' sureties, lends further support to my view. The word 'sufficient' is defined in *Black's Law Dictionary* (6th Ed) as:

> Adequate, enough, as much as may be necessary, equal or fit for end proposed, and that which may be necessary to accomplish an object. Of such quality, number, force or value as to serve a need or purpose. *Nissen v Miller* 44 NM 487, 105, P 2d 324, 325.

Clearly the word 'sufficient' does not refer to the number of sureties as that would already have been determined by the court. It therefore refers to their sufficiency to be accepted as sureties after such determination. It is left to the discretion of the court to decide on the sufficiency of a surety. In exercising this discretion, the court must be satisfied that a proposed surety has the capacity to ensure the attendance of an accused in court when required. It must also be remembered that the undertaking given by a surety to ensure the attendance of an accused is quite independent from the undertaking given by an accused to appear in court. Thus, a court must personally satisfy itself as to the reliability and solvency of a proposed surety. To that extent, it is the responsibility of the court to ensure that he is a fit and proper person to be accepted as a surety. The exercise of this discretion by the court is unfettered as the word 'sufficient' has been used in s 390(1) in its general sense without any qualification. A decision on the sufficiency of a surety, being the exercise of a discretion, may entail not only an inquiry into the ability of a person to be accepted as a surety, but also an alternative

A requirement, where considered necessary by the court, that he does furnish some form of security in order to be so accepted. It must also be observed that the relevant provisions of the Code use the word 'bond' in its general sense without any qualification. It therefore contemplates a secured as well as an unsecured bond. My response to Mr Wong's argument that the words '... to pay the penalty ...' in s 404(1) of the Code refer to a payment in the B future, thereby excluding the provision of security, cannot be sustained as the payment must, as of necessity, refer to the future, because at the time when the bond is being executed, there will be no breach giving rise to payment of the penalty. His contention that the words 'bind myself to forfeit' in form 3 contemplate only an undertaking thereby precluding the C taking of a security cannot also be sustained as an undertaking itself, like a guarantee, can be required to be secured (see *Public Bank Bhd v Perwira Affin Bank Bhd* [2001] 7 CLJ 447). I am also of the opinion that the authorities submitted by him do not support the stand taken by him. The Indian cases can be explained on the basis that the procedure for taking cash deposits must be in accordance with the procedure laid down in s 403 of the D Code. The English case of *R v Harrow Justices, ex p Morris* [1972] 3 All ER 494 is not relevant as it deals with recognizances and not bail bonds. I therefore hold that it is lawful for a court to require security to be furnished by a bailor when executing a bail bond. I express my gratitude to Mr Wong for the very extensive research that he had undertaken in presenting his most eloquent and attractive argument.

E In the motion before me, the applicant has already been released on bail upon the execution of the bail bond. The person facing difficulties and, consequently, seeking a reduction of the bail amount is in actual fact the bailor. This raises the question of whether a bailor can seek to vary the amount of bail in respect of which he has executed the bond. The variation F of the amount of bail fixed can be sought as authorized by ss 389 and 394 of the Code which read as follows:

> Section 389
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> The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case as being sufficient to secure the G attendance of the person arrested, but shall not be excessive; and a Judge may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail or that the bail required by a police officer or Court be reduced or increased.
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> Section 394
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> H Any person aggrieved by any order or refusal of any inferior Court made under this Chapter may appeal to the High Court, which may confirm, vary or reverse the order of such inferior Court.

Section 389 refers, inter alia, to the power of the High Court to reduce or increase the amount of bail required by a court. It is a power that is exercisable once an order for bail has been made. As it refers to a variation I of the bail amount required, it contemplates a situation where the bail bond has not been executed. The only person who has an interest in the amount of bail required is the accused. Section 394 refers to a person 'aggrieved' by

an order that has been made. Such a person is one who has been affected by the order that has been made. A bailor is not a person affected by an order for bail, and is therefore not a person 'aggrieved' within the meaning of the section. It follows that under both the sections, a bailor is not a person with an interest to move the High Court. In the circumstances, a bailor is not entitled in law to seek a variation of the amount of bail in respect of which he has executed the bond. The proper course to be adopted by the bailor is to follow s 393 of the Code pursuant to which she may apply to the sessions court to be discharged from the bond. If she produces the applicant before the court at the time she applies to be discharged, the question of forfeiture of her bond will not arise (see *KP Madhavan Pillai v State* [1950] Ker LT 670). The bond that she had executed will be discharged. The applicant may then make an appropriate application for the bail sum to be reduced or for the acceptance of a lesser cash deposit in lieu of the execution of a bond. In the upshot, I dismiss the motion.

Motion dismissed.

Reported by Chew Phye Aun